KOBAYASHI
SUGITA &
GODA
ATTORNEYS • AT • LAW

999 Bishop Street, Suite 2600
Honolulu, Hawaii 96813-4430

Telephone: 808-539-8700
Facsimile: 808-539-8799
E-Mail: ks@ksglaw.com

Bert T. Kobayashi, Jr.*
Kenneth Y. Sugita*
Alan M. Goda*
Dale W. Lee*
Lex R. Smith*
David L. Moorcy*
Wendell H. Fuji*
Robert K. Ichikawa*
Jamcyn-Ann A. Oda*
Clifford K. Higa*
Charles W. Gall*
John F. Lezak*
Larry L. Myers*
Craig K. Shikuma*
Christopher T. Kobayashi*
Ruth K. Oh*
Burt T. Lau*
Ronald T. Ogomori*
David B. Tongg*
Bruce A. Nakamura*
Larson K. Kupau*
Jonathan A. Kobayashi*

Brandon S. Bailey
George Cassman III
Anne E. Lopez
Kenneth M. Nakasone
Curtis K. Saiki
Jesse W. Schiel
Duane C. Seabolt
Joseph A. Stewart
Ann C. Teranishi
Robert A. Uooka
Thomas H. Yee
Nathan H. Yoshimoto

*A Law Corporation

January 25, 2005

Clyde Wm. Matsui, Esq.
Pacific Guardian Center
737 Bishop Street
Suite 1400
Honolulu, Hawaii 96813

Re: Wayne Berry vs. Hawaiian Express, et al.

Dear Mr. Matsui:

Pursuant to the discussion at our meeting on January 7, 2005, enclosed is a diagram of the C&S Logistics network. The diagram was prepared at my request by defendant (and C&S employee) Mark Dillon. Also included with the diagram is a brief narrative description of the network and information regarding access thereto.

Of course, we ask that you and your expert independently verify whether or not the information contained in the diagram and narrative is true. The reason this process is necessary is because Fleming, C&S and their attorneys and employees have all been accused of lying about the computers and software that they use. Thus, we need you to provide the Court with independent information regarding the C&S computers and their contents.

I don't know if you are aware that there have been accusations that C&S would conceal the real system during your visit. Hence I wish to assure you that you and your independent expert are welcome to come to C&S's facility without notice or with as little notice as you wish to provide; you are welcome to stay as long as you desire and to return as many times as you wish in order to verify the software that C&S is actually using to track ocean shipments, who has access to the software, how it is being used and any other information you deem appropriate.

Mr. Berry has also alleged that the C&S Logistics network contains more than 2,000 copies or derivatives of Wayne Berry's original works of authorship. The plaintiff has rejected our request to identify those files so we can delete them. The reason for the plaintiff's refusal is "the kids who are being sued for mp3 swapping don't receive any advance notice."
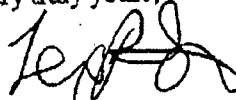
EXHIBIT "B"

Clyde Wm. Matsui, Esq.
January 25, 2005
Page 2

Accordingly, we are hopeful you can find a procedure to identify the filenames Mr. Berry claims to own so we can delete them.

Finally, at a hearing on January 18, Judge Susan O. Mollway suggested that the parties seek your assistance in attempting to find a reasonable basis for settlement of this litigation. Plaintiff's counsel represented to the Court that the plaintiff is in full agreement with the Court's recommendation. On behalf of Fleming and C&S, this is to advise you that we also are in agreement with seeking a reasonable settlement through your services as a mediator. We stand ready to proceed with mediation according to your instructions. I have spoken with Mr. Hosoda who has authorized me to represent that his clients are also in agreement with mediation.
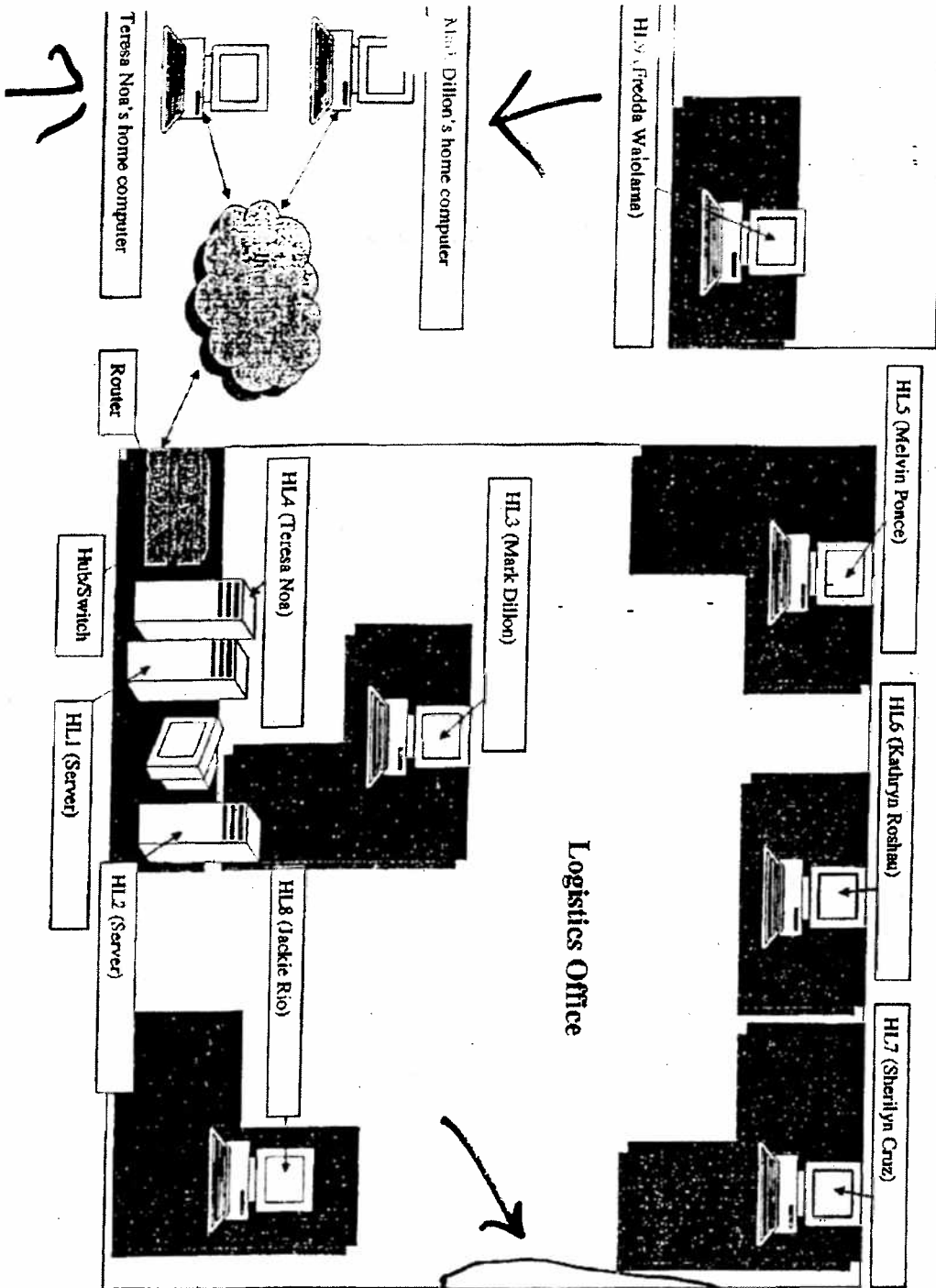
Very truly yours,

LEX R. SMITH
for
KOBAYASHI, SUGITA & GODA

cc: all counsel of record

Logistics Office

HL1 through HL9 are connected to a Netgear switch via Cat 5 cable. They comprise the local area network. (Note: the computer names have been changed as a security precaution.)

The only other computers accessing the above network are Teresa Noa's and Mark Dillon's home computers. Teresa performs her duties from home by remote control of HL4 via the Internet using PCAnywhere software. Mark Dillon sometimes performs duties from his home computer using Microsoft Terminal Services Client software over the Internet to remotely control either HL3 or one of the servers, HL1 or HL2.

Each user on the Logistics network, with the exception of Teresa Noa, also has a separate computer at their desk connected to the C&S network for the purpose of accessing information on that network. Thus the Logistics Department network is kept completely separate from the C&S corporate network. The same separation between the Logistics network and the corporate network was maintained when Fleming was operating. The Logistics network has never been connected to either the Fleming or the C&S corporate networks.

172

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

WAYNE BERRY, a Hawaii   ) CIVIL NO. CV03 00385
citizen,   )   SOM-LEK
) (Copyright)
         Plaintiff,   )
)
    vs.   ) DEPOSITION OF
) MARK DILLON
HAWAIIAN EXPRESS SERVICE,   )
INC., a California   ) DATE TAKEN: 12-23-03
corporation; H.E.S.   )
TRANSPORTATION SERVICES,   ) VOLUME 2
INC., a California   ) Pages 172 - 387
corporation; CALIFORNIA   )
PACIFIC CONSOLIDATORS,   )
INC., a California   )
corporation; JEFFREY P.   )
GRAHAM and PETER SCHAUL,   )
California citizens; MARK   )
DILLON and TERESA NOA,   )
BRIAN CHRISTENSEN, Hawaii   )
citizens; FLEMING   )
COMPANIES, INC., an   )
Oklahoma corporation;   )
C & S LOGISTICS OF HAWAII,   )
LLC, a Delaware LLC;   )
C & S WHOLESALE GROCERS,   )
INC., a Vermont   )
corporation; C & S   )
ACQUISITIONS, LLC;   )
FOODLAND SUPER MARKET,   )
LIMITED, a Hawaii   )
corporation; HAWAII ·   )
TRANSFER COMPANY, LIMITED,   )
a Hawaii corporation, DOE   )
INDIVIDUALS 1-350; DOE   )
PARTNERSHIPS, CORPORATIONS   )
and OTHER DOE ENTITIES   )
1-20,   )
)
         Defendants.   )
_____)

1   DEPOSITION OF MARK DILLON

2   Taken on behalf of the Plaintiff pursuant to

3   Notice, on Tuesday, December 23, 2003, commencing

4   at 9:30 a.m., at the Law Offices of Lynch Ichida

5   Thompson Kim & Hirota, 1132 Bishop Street, Suite

6   1405, Honolulu, Hawaii 96813.

7

8

9   A P P E A R A N C E S

10

     For Plaintiff Wayne Berry:
11
              TIMOTHY J. HOGAN, ESQ.
12   Lynch Ichida Thompson Kim & Hirota
              1132 Bishop Street, Suite 1405
13   Honolulu, Hawaii 96813
              (808) 528-0100
14
     For Defendants Mark Dillon and Brian
15   Christensen:

16   LYLE HOSODA, ESQ.
              345 Queen Street, Suite 804
17   Honolulu, Hawaii 96813
              (808) 524-3700
18
     For Defendants Fleming Companies, Inc., C & S
19   Wholesale Grocers, Inc., C & S Logistics of Hawaii,
     LLC, and C & S Acquisitions, LLC:
20
              LEX R. SMITH, ESQ.
21   Kobayashi Sugita & Goda
              First Hawaiian Center
22   999 Bishop Street, Suite 2600
              Honolulu, Hawaii 96813
23   (808) 539-8700

24

25

1   APPEARANCES (Cont'd):

2   For Defendant Hawaiian Express Service, Inc.:

3   EMILY REBER PORTER, ESQ.
         Goodsill Anderson Quinn & Stifel
4   Alii Place, Suite 1800
         1099 Alakea Street
5   Honolulu, Hawaii 96813
         (808) 547-5600
6

7   For Defendant Foodland Super Market, Limited:

8   LEROY E. COLOMBE, ESQ.
         Chun Kerr Dodd Beaman & Wong, LLLC
         Topa Financial Center, Fort Street Tower
9   745 Fort Street, Floor 9
         Honolulu, Hawaii 96813
10   (808) 528-8200

11

12   For Defendant Hawaii Transfer Company, Limited:

13   EDWARD SAFFREY, ESQ.
         Goodsil Anderson Quinn & Stifel
         Alii Place
14   1099 Alakea Street, Suite 1800
         Honolulu, Hawaii 96813
15   (808) 547-5600

16   ALSO PRESENT: Wayne Berry, Plaintiff

17

18   REPORTED BY: Laura Savo, CSR No. 347
                Notary Public, State of Hawaii

19

20

21

22

23

24

25

305

1   "Question: Why didn't you?")

2   THE WITNESS: And I asked counsel about

3   that.

4   MR. HOSODA: Wait a minute.

5   MR. SMITH: Don't tell us what counsel

6   said.

7   MR. HOSODA: Attorney-client privilege.

8   Q   (By Mr. Hogan) Is it fair to say that you

9   never did ask Mr. Berry for a copy?

10   A   I never did, no. We did consider it.

11   Q   Okay.

12   A   I did consider it. Let me put it that

13   way.

14   Q   Now, Mr. Dillon, you've been handed a

15   document marked Exhibit 12, and I stated before,

16   these purport to be log files. And, again, you'd

17   be the one, I presume, to have the originals of

18   these. And so if there's a question as to what

19   we're looking at here, we can defer this, but what

20   I'm going to ask you to look at and, again,

21   unfortunately, I've only got one color one, is on

22   the first page. If you scan down where if you look

23   at mine, sir, I'm going to point to, you can look

24   where I'm looking at right here. They've got it

25   highlighted here where it says "administrator,"

306

1   which is about nine lines down.

2   MR. SMITH: What's the information on the

3   left column? 20020522 space 0710 and then 06.

4   Q   (By Mr. Hogan) Do you see that, sir?

5   A   Yes.

6   Q   It says "host in session," and then looks

7   like some number and then BARUCH?

8   A   Right.

9   Q   Do you know what BARUCH means?

10   A   BARUCH is the name of my computer at

11   home.

12   Q   And then "TCP/IP," and then it says

13   "administer -- administrator Mark Dillon"?

14   A   Uh-huh.

15   Q   Does this line of text have any meaning

16   to you?

17   A   Well, what is this? PC Anywhere logs.

18   Okay. It's noting that I've logged in via PC

19   Anywhere.

20   Q   And logged in from home?

21   A   Yes.

22   Q   So when it says BARUCH, that it's telling

23   you that that computer is logging in this user

24   which is administrator Mark Dillon?

25   A   Yes.

307

1   Q   Now, if we go down five lines, you'll see

2   on the left side is 20020522 1726 26.

3   A   Okay.

4   Q   Do you see that?

5   A   Correct.

6   Q   And then it talks about a file transfer

7   received, and there's one, two, three, four, five

8   similar lines that say "file transfer received"?

9   A   Correct.

10   Q   And then it says "data --" going to the

11   first one, first line, "data/backup/data transfer

12   sequence six.doc"?

13   A   Correct.

14   Q   And then the next one below it is "FHL

15   Data.mdb." What is that?

16   A   That's the database I created to replace

17   Mr. Berry's database.

18   Q   And you were operating -- is it fair to

19   say this is showing that you were operating that

20   database from home?

21   A   No.

22   Q   If it's a PC Anywhere --

23   A   We never operated that database, as I

24   stated earlier. That database was in the process

25   of being created at that time.

387

```
 1                    C E R T I F I C A T E

 2   STATE OF HAWAII        )
                            )   ss.
 3                          )

 4
              I, LAURA SAVO, a Notary Public in and for
 5   the State of Hawaii, do hereby certify:

 6            That prior to being examined, the witness
     herein, MARK DILLON, was sworn by me to testify to
 7   the truth, the whole truth and nothing but the
     truth;
 8
              That the foregoing deposition was taken
 9   down by me in machine shorthand at the time and
     place herein stated, and was thereafter reduced to
10   typewriting under my supervision;

11            That the foregoing is a full, true
     and correct transcript of said deposition;
12
              That after said deposition was reduced to
13   typewriting, the witness, in accordance with Rule
     30(e) of the Hawaii Rules of Civil Procedure, was
14   duly informed of the right to make such corrections
     as might be necessary to render the same true and
15   correct.

16            I further certify that I am not of
     counsel or attorney for any of the parties to this
17   case, nor in any way interested in the outcome
     hereof, and that I am not related to any of the
18   parties hereto.

19            Witness my hand and seal this 9th day of
     January, 2004.
20

21

22   _____
     LAURA SAVO, RPR, CSR NO. 347
23   Notary Public, State of Hawaii
     My Commission Expires: 11/28/2005
24

25
```
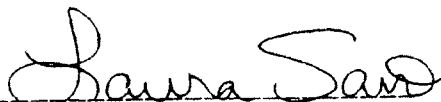
JAN FLOATE & ASSOCIATES

PCAnywhere LOG Files
File: PCAnywhere LOG Files - FCS00

```
20020521 0733 <11 <PCA Host locking workstation
20020521 0733 <01 <Host Started <03 <TCP/IP <06 <C:\WINNT\Profiles\All Users\Application Data\Symantec\pcAnywhere\NETWORK.BHF <18 <Unknown
20020521 0738 <01 <Host Started <03 <TCP/IP <06 <C:\WINNT\Profiles\All Users\Application Data\Symantec\pcAnywhere\NETWORK.BHF <18 <Unknown
20020521 0750 <06 <Host In Session <01 <FCS00 <02 <FHL138 <03 <TCP/IP <04 <Administrator <05 <Administrator
20020521 1413 <22 <File Transfer Initiated <01 <FCS00 <02 <FHL138
20020521 1414 <26 <File Transfer File Received <10 <75264 <11 <Receive <12 < <13 <D:\DataBackup\Data Transfer Sequences 5.doc <14 <Not scanned <15 <Succeeded
20020521 1414 <23 <File Transfer Ended
20020521 1433 <02 <Host End Session <03 <TCP/IP <08 <Remote logged off
20020521 1433 <11 <PCA Host locking workstation
20020521 1433 <01 <Host Started <03 <TCP/IP <06 <C:\WINNT\Profiles\All Users\Application Data\Symantec\pcAnywhere\NETWORK.BHF <18 <Unknown
20020522 0710 <06 <Host In Session <01 <FCS00 <02 <BARUCH <03 <TCP/IP <04 <Administrator <05 <Mark Dillon
20020522 0712 <02 <Host End Session <03 <TCP/IP <08 <Remote logged off
20020522 0712 <11 <PCA Host locking workstation
20020522 0712 <01 <Host Started <03 <TCP/IP <06 <C:\WINNT\Profiles\All Users\Application Data\Symantec\pcAnywhere\NETWORK.BHF <18 <Unknown
20020522 1049 <06 <Host In Session <01 <FCS00 <02 <FHL136 <03 <TCP/IP <04 <Administrator <05 <Administrator
20020522 1714 <22 <File Transfer Initiated <01 <FCS00 <02 <FHL136
20020522 1726 <26 <File Transfer File Received <10 <74752 <11 <Receive <12 < <13 <D:\DataBackup\Data Transfer Sequences 6.doc <14 <Not scanned <15 <Succeeded
20020522 1728 <26 <File Transfer File Received <10 <95293440 <11 <Receive <12 < <13 <D:\DataBackup\FHL Data.mdb <14 <Not scanned <15 <Succeeded
20020522 1729 <26 <File Transfer File Received <10 <4022272 <11 <Receive <12 < <13 <D:\DataBackup\VT.iba <14 <Not scanned <15 <Succeeded
20020522 1730 <26 <File Transfer File Received <10 <21266912 <11 <Receive <12 < <13 <D:\DataBackup\FHL Forms 051002.mdb <14 <Not scanned <15 <Failed
20020522 1731 <26 <File Transfer File Received <10 <21266912 <11 <Receive <12 < <13 <D:\DataBackup\FHL Forms 051002.mdb <14 <Not scanned <15 <Succeeded
20020522 1731 <23 <File Transfer Ended
20020522 1808 <02 <Host End Session <03 <TCP/IP <08 <Remote logged off
20020522 1808 <11 <PCA Host locking workstation
20020522 1808 <01 <Host Started <03 <TCP/IP <06 <C:\WINNT\Profiles\All Users\Application Data\Symantec\pcAnywhere\NETWORK.BHF <18 <Unknown
20020522 1820 <06 <Host In Session <01 <FCS00 <02 <FHL136 <03 <TCP/IP <04 <Administrator <05 <Administrator
20020522 1938 <02 <Host End Session <03 <TCP/IP <08 <Remote logged off
20020522 1938 <11 <PCA Host locking workstation
20020522 1938 <01 <Host Started <03 <TCP/IP <06 <C:\WINNT\Profiles\All Users\Application Data\Symantec\pcAnywhere\NETWORK.BHF <18 <Unknown
20020523 0901 <06 <Host In Session <01 <FCS00 <02 <FHL136 <03 <TCP/IP <04 <Administrator <05 <Administrator
20020523 1428 <22 <File Transfer Initiated <01 <FCS00 <02 <FHL136
20020523 1431 <26 <File Transfer File Received <10 <95805440 <11 <Receive <12 < <13 <D:\DataBackup\FHL Data.mdb <14 <Not scanned <15 <Succeeded
20020523 1431 <26 <File Transfer File Received <10 <7245824 <11 <Receive <12 < <13 <D:\DataBackup\FHL Forms 051002.mdb <14 <Not scanned <15 <Succeeded
20020523 1432 <26 <File Transfer File Received <10 <4024832 <11 <Receive <12 < <13 <D:\DataBackup\VT.iba <14 <Not scanned <15 <Succeeded
20020523 1432 <23 <File Transfer Ended
20020523 1452 <02 <Host End Session <03 <TCP/IP <08 <Remote logged off
20020523 1452 <11 <PCA Host locking workstation
20020523 1452 <01 <Host Started <03 <TCP/IP <06 <C:\WINNT\Profiles\All Users\Application Data\Symantec\pcAnywhere\NETWORK.BHF <18 <Unknown
20020524 1449 <06 <Host In Session <01 <FCS00 <02 <FHL136 <03 <TCP/IP <04 <Administrator <05 <Administrator
20020524 1704 <22 <File Transfer Initiated <01 <FCS00 <02 <FHL136
20020524 1706 <26 <File Transfer File Received <10 <95821824 <11 <Receive <12 < <13 <D:\DataBackup\FHL Data.mdb <14 <Not scanned <15 <Succeeded
20020524 1707 <26 <File Transfer File Received <10 <74752 <11 <Receive <12 < <13 <D:\DataBackup\Data Transfer Sequences 6.doc <14 <Not scanned <15 <Succeeded
20020524 1710 <23 <File Transfer Ended
20020524 1841 <02 <Host End Session <03 <TCP/IP <08 <Remote logged off
20020524 1841 <11 <PCA Host locking workstation
20020524 1841 <01 <Host Started <03 <TCP/IP <06 <C:\WINNT\Profiles\All Users\Application Data\Symantec\pcAnywhere\NETWORK.BHF <18 <Unknown
20020528 0900 <06 <Host In Session <01 <FCS00 <02 <FHL136 <03 <TCP/IP <04 <Administrator <05 <Administrator
20020528 1623 <22 <File Transfer Initiated <01 <FCS00 <02 <FHL136
20020528 1624 <26 <File Transfer File Received <10 <74752 <11 <Receive <12 < <13 <D:\DataBackup\Data Transfer Sequences 6.doc <14 <Not scanned <15 <Succeeded
20020528 1625 <26 <File Transfer File Received <10 <96387072 <11 <Receive <12 < <13 <D:\DataBackup\FHL Data.mdb <14 <Not scanned <15 <Succeeded
20020528 1626 <26 <File Transfer File Received <10 <52084736 <11 <Receive <12 < <13 <D:\DataBackup\FHL Forms 051002.mdb <14 <Not scanned <15 <Succeeded
20020528 1649 <02 <Host End Session <03 <TCP/IP <08 <Remote logged off
```